

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL
HAS NOT TAKEN SUFFICIENT ACTION TO BILL
AND RECOVER HAZARDOUS WASTE CLEANUP
COSTS FROM RESPONSIBLE PARTIES**



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October 30, 1991

F-426.1

Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
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Dear Mr. Chairman and Members:

Summary The Department of Toxic Substances Control (department), which was formerly the Toxic Substances Control Program within the Department of Health Services, has not taken sufficient action to bill responsible parties and recover approximately \$222 million in costs the department incurred from fiscal year 1981-82 through 1989-90. The department incurred these costs to monitor and clean up hazardous waste sites. State statutes require the department to recover from responsible parties the costs the department paid from the Hazardous Substance Account and the Hazardous Substance Cleanup Fund to monitor and clean up hazardous waste sites. In addition, since July 1, 1989, state statutes have required the Board of Equalization (board) to collect activity fees from potentially responsible parties for the department's cost of overseeing hazardous waste sites. From July 1, 1981, through June 30, 1990, the department spent approximately \$222 million from the Hazardous Substance Account and the Hazardous Substance Cleanup Fund on such activities. However, as of February 28, 1991, the department had billed parties responsible for hazardous waste for only \$45 million. Further, of the \$45 million the department had billed, it had collected only \$16 million. In addition, the board had collected activity fees of

\$2 million as of February 28, 1991. Although the statute of limitations may prevent the department from recovering \$31 million of the costs incurred for fiscal years 1981-82 through 1984-85, the department has estimated that it can collect approximately 63 percent of the \$135 million of costs incurred from fiscal year 1985-86 through 1988-89. This amount is approximately \$85 million.

Background

Based on information we initially gathered for an audit report issued on August 31, 1989, we expanded our work in the annual Single Audit of the State of California for fiscal year 1990-91 to specifically include the Department of Health Services' Toxic Substances Control Program.¹ In July 1991, this program became the Department of Toxic Substances Control within the California Environmental Protection Agency.

The primary objective of the department is to protect and enhance public health and the environment from the effects of hazardous waste by regulating the management and promoting the reduction of hazardous waste. Among other duties, the department is responsible for implementing the State's site cleanup laws. To ensure that hazardous waste sites are cleaned up properly, the department monitors the cleanup work performed by responsible parties, including owners or operators of facilities that generate, treat, store, transport, or dispose of hazardous waste. In cases in which the department cannot locate the responsible parties or the responsible parties are not taking proper or prompt action, the department may use state or federal funds to undertake the cleanup. The department also performs long-term operation and maintenance of hazardous waste sites when needed. To recover state or federal expenditures for site cleanup, the department takes actions against the parties responsible for the hazardous waste.

¹The report we issued on August 31, 1989, is entitled *California's Hazardous Waste Management Program Continues To Improve But Needs To More Fully Enforce State Laws and Regulations*, (Report number P-831).

The State obtains funding for site cleanup from regulatory fees, fines, and penalties; from proceeds of the sale of \$100 million of state general obligation bonds; from federal grants; and from costs recovered from responsible parties. According to the Governor's 1991-92 Budget, the State budgeted approximately \$61 million for hazardous waste cleanup for fiscal year 1990-91.

**Scope and
Methodology**

We conducted this audit as part of the Single Audit of the State of California for fiscal year 1990-91. The purpose of the audit of the department was to determine the department's compliance with state laws concerning the recovery of public funds spent for monitoring and cleaning up hazardous waste sites and to determine the adequacy of the department's internal accounting controls.

To determine whether the department complied with state laws concerning the recovery of public funds spent for monitoring and cleaning up hazardous waste sites, we reviewed state statutes and department policies. We also reviewed data obtained from reports issued by the State Controller's Office to determine the amount of the costs, interest, and administrative charges that the department could recover. To determine whether the department's internal accounting controls were adequate, we interviewed department staff and reviewed department policies and procedures. Our review was limited to inquiry and observation and did not include tests of transactions.

**The Department
Has Not Taken
Sufficient Action
To Recover
Cleanup Costs**

The department has not taken sufficient action to bill responsible parties and recover approximately \$222 million in costs that the department incurred to monitor and clean up hazardous waste sites from fiscal year 1981-82 through 1989-90. As of February 28, 1991, the department had billed parties responsible for hazardous waste for only \$45 million, and it had collected only \$16 million. In addition, the board had collected activity fees of \$2 million as of February 28, 1991.

The Health and Safety Code, Section 25360, requires the department to recover from the liable person or persons the costs incurred and payable from the Hazardous Substance Account and from the Hazardous Substance Cleanup Fund. Section 25360 also requires that costs paid from the Hazardous Substance Cleanup Fund include interest calculated at a rate equal to the interest rate of the bonds used to finance the activities of the fund. In addition, the responsible parties are liable for administrative costs equal to 10 percent of the reasonable costs actually incurred by the department or five hundred dollars, whichever is greater. Section 25360 requires that costs incurred by a responsible party be reduced by any activity fees paid pursuant to the Health and Safety Code, Section 25343. Finally, Section 25343 imposes a fee upon any potentially responsible party, to be paid in advance, for the costs incurred by the department on or after July 1, 1989, in connection with overseeing hazardous waste cleanup activities. This fee is collected by the Board of Equalization and deposited into the Hazardous Substance Account.

Based on our analysis of the Annual Reports issued by the State Controller's Office, the department paid approximately \$189 million from the Hazardous Substance Account and the Hazardous Substance Cleanup Fund from July 1, 1981, through June 30, 1990, to monitor and clean up hazardous waste sites. In addition, we estimate that the interest and administrative charges that the department assessed on costs relating to site cleanup in that time amounted to approximately \$13 million and \$20 million, respectively. These charges bring the total amount of costs for fiscal years 1981-82 through 1989-90 to approximately \$222 million.

The statute of limitations may prevent the department from recovering costs and administrative charges of approximately \$31 million for fiscal years 1981-82 through 1984-85. In its Supplemental Report to the Legislature, dated March 25, 1991, the department reported that it could recover approximately 63 percent of the costs it paid from the Hazardous Substance Cleanup Fund from fiscal years 1985-86 through 1988-89. According to the department, this estimate also applies to the costs it paid from the

Hazardous Substance Account during the same period. The department will not be able to recover all of the costs it has paid from these funds because, among other reasons, it cannot identify the responsible parties for all hazardous waste sites. In addition, some responsible parties are either bankrupt or financially unable to repay all of the costs.

Based on our analysis of the information shown in the table below, we estimate that the department could bill responsible parties for approximately \$135 million in costs for fiscal year 1985-86 through 1988-89, including interest and administrative charges. If the department can recover 63 percent of these costs as it estimates, then it could collect approximately \$85 million. In its report dated March 25, 1991, the department did not estimate the collectibility of the cleanup costs of approximately \$56 million incurred during fiscal year 1989-90.

**Hazardous Waste Site Cleanup
Costs and Charges
Fiscal Years 1981-82 Through 1989-90
(In Millions)**

	1981-82 Through 1984-85	1985-86 Through 1988-89	1989-90	Total
Costs				
Hazardous Substance Account	\$28	\$ 36	\$42	\$106
Hazardous Substance Cleanup Fund	0	74	9	83
Subtotal	28	110	51	189
Charges				
Interest	0	13	0	13
Administration	3	12	5	20
Subtotal	3	25	5	33
Total Costs and Charges	\$31^a	\$135	\$56^b	\$222

^aThe statute of limitations may prevent the department from collecting this amount.

^bThe department has not estimated the collectibility of this amount.

The department has not billed responsible parties and recovered more of the costs of cleaning up hazardous waste sites for several reasons. According to the department, when it began operating in 1981, it was able to carry out only a limited cost recovery program because it lacked resources. The Automated Reports Management System, which the department used to compile its cost data prior to July 1987, did not provide data in a form suitable for billing responsible parties. In addition, the department did not have sufficient staff to manually compile the cost data and prepare the invoices necessary to bill the responsible parties. In fiscal year 1987-88, the department began using the California State Accounting and Reporting System (CALSTARS) to record its financial transactions and to accumulate costs for billing purposes. However, in its Supplemental Report to the Legislature, the department reported that, because of the way its CALSTARS system organizes cost data, the extraction of cost data is an extremely time consuming process. According to the department, because of the effort involved in compiling the cost data and the limited resources available, it has focused its efforts on sites where cleanup negotiations are in process, cost recovery agreements are in effect, the responsible parties are financially viable, or the statute of limitations is approaching. As a result, the department has not accounted for all of the costs it has incurred, including costs it has determined are not billable or collectible.

The department reported in its Supplemental Report to the Legislature that it is taking some actions to improve its cost recovery efforts. For example, effective July 1988, the department added 14 positions to its cost recovery unit to assist in compiling cost data and preparing billings. It is also studying ways to extract cost data from the CALSTARS system in a more suitable form for billing responsible parties.

Conclusion The Department of Toxic Substances Control has not taken sufficient action to bill parties responsible for hazardous waste sites and to recover approximately \$222 million in costs the department incurred to monitor and clean up these hazardous waste sites. From July 1, 1981, through June 30, 1990, it spent approximately

\$222 million from the Hazardous Substance Account and the Hazardous Substance Cleanup Fund on hazardous waste cleanup. However, as of February 28, 1991, the department had billed parties responsible for hazardous waste for only \$45 million. Further, of the \$45 million that the department had billed, it had collected only \$16 million. In addition, the Board of Equalization had collected activity fees of \$2 million as of February 28, 1991. Although some of the total costs may be uncollectible, the department has estimated that it can collect approximately 63 percent of the \$135 million of costs it incurred from fiscal year 1985-86 through 1988-89, which amounts to approximately \$85 million.

Recommendations

To improve its ability to recover public funds spent to monitor and clean up toxic waste sites, the Department of Toxic Substances Control should take the following actions:

- Ensure that all costs that can be billed to responsible parties are billed promptly; and
- Account for all cleanup costs including those costs that the department has determined it cannot bill to responsible parties or cannot collect.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this letter report.

Respectfully submitted,



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October 25, 1991

Mr. Kurt R. Sjoberg
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Dear Mr. Sjoberg:

Thank you for the letter report of October 15, 1991 addressed to Mr. James M. Strock, Secretary of the California Environmental Protection Agency (Cal-EPA). Secretary Strock has asked me to address the issues in this report which refer to the Department of Toxic Substances Control's (Department) cost recovery activities. I appreciate the opportunity to address these issues before the report is finalized.

I share the concern you expressed over the recovery of site cleanup costs that are initially funded by the State of California and I can assure you that this will be one of the principle objectives for the new Cal-EPA.

Your report noted that the various state agencies authorized to fund expenditures from the Hazardous Substance Cleanup Fund (Bond) and the Hazardous Substance Account (HSA, also referred to as the State Superfund) had expended \$189 million from July 1981 through June 1990. In addition, you identified \$13 million in interest and \$20 million in administrative costs that you concluded the program should be collecting. In sum, your analysis indicates these costs total \$222 million. However, it is important to also understand that the Bond and the HSA were initially established to provide a funding mechanism for orphan sites, state match for National Priority List (NPL) sites, sites where the responsible party was reluctant or fiscally unable to fund the cleanup costs, and to provide funding for state oversight activity prior to cost recovery. These conditions would clearly imply that the pursuit of cost recovery may in some instances be fraught with administrative and legal difficulties.

Initial cost recovery efforts have been mixed primarily due to the willingness and/or ability of the responsible parties to repay state costs, and these difficulties are clearly affecting the cost recovery effort. The Department's most recent status report dated through September 30, 1991 notes that of the \$52.3 million billed, \$20.4 million has been collected and of the remaining \$31.9 million, a total of \$24.6 million has been referred to the Toxics Legal Office for possible litigation. Subsequently, \$12.8 million has been forwarded to the Attorney General. Another \$7.3 million are expenditures on sites where the responsible parties (RPs) have filed bankruptcy. This information should not be considered as responsive to your letter but is relevant to understanding the complex legal and, otherwise, controversial issues that cost recovery generates.

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The two recommendations contained in your report are noted below with comments that are preliminary but relevant to the issues and the Department's plans.

- o Ensure that all costs that can be billed to responsible parties are billed promptly.

The Department has initiated several improvements to the current system and we will be carefully monitoring that progress. These changes include establishing an automated system for downloading and formatting the huge volume of data contained in the California Statewide Accounting Reporting System (CALSTARS). The status of all sites and the collectability of the cleanup costs will be reviewed by January 30, 1992. We are also considering supplementing staffing and resource needs that the program justifies, and will be addressing this through the development of the 1992-93 Governor's Budget.

The efficiencies realized through these actions will allow the Department to begin identifying and billing RPs at active sites promptly and systematically. In addition, these actions will allow for prompt review and billing of inactive sites.

- o Account for all cleanup costs including those costs that the Department has determined it cannot bill to responsible parties or cannot collect.

While I am in full agreement with your first recommendation, I am apprehensive over any immediate diversion of staff from the ongoing cost recovery effort to the project envisioned in this second recommendation. While this recommendation has merit, and must ultimately occur, it is for informational purposes and, in itself, does not directly contribute to the actual billing and collection process. Any immediate diversion to this second project would compound the situation that you want addressed in your first recommendation which is to bill those who have been identified as liable for cleanup costs. I have directed the development of an action plan with a schedule for performing this second project.

Your report is particularly timely with regard to the long term direction of cost recovery. A comprehensive program review of the entire Department focusing on several critical areas has been initiated at the request of Secretary Strock, including program funding and cost recovery. This review committee is comprised of representatives from industry, the legislature, agriculture, environmental and public interest groups, governmental representatives and university officials. The committee's reports and recommendations will be completed by December 31, 1991. As part of this review, the committee will be requested to consider the concerns you have raised and to include specific comments on the two recommendations you have noted. In addition, policies and procedures will be reviewed to assure that these guidelines are conducive to the billing and collection of site cleanup costs.


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Following the receipt of the review committee's recommendation, a detailed plan will be prepared for accelerating the cost recovery effort that will be released on January 10, 1992, along with the Governor's Budget. Simultaneously, the Department is continuing to pursue the planned improvements noted in the March 25, 1991 Supplemental Report to the Legislature--Cost Recovery, and the status of this effort will be incorporated into the January proposal.

I would like to extend my thanks for the work of your staff in raising these matters and I believe the proposal developed by the Department in January will fully address the recommendations contained in your report.

If you have any questions, please contact me at the number listed above or Mr. Charles A. Nunn, Chief, Financial Operations Section, at 322-7856.

Sincerely,

FOR 
William F. Soo Hoo
Acting Director

cc: Mr. James M. Strock
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**cc: Members of the Legislature
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Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
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Senate Majority/Minority Consultants
Capitol Press Corps**